

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

ROBERT PAYNE,

Plaintiff,

v.

MERCK & CO., INC., MERCK SHARP &  
DOHME CORP., and McKESSON CORP.,

Defendants.

Case No. 5:17-cv-00202-MOC-DSC

**STIPULATION OF DISMISSAL WITHOUT PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Robert Payne (“Plaintiff”), Defendant Merck & Co., Inc., Defendant Merck Sharp & Dohme Corp., and Defendant McKesson Corp. (collectively, “Defendants”) hereby stipulate to the dismissal of any and all claims asserted against Defendants in the above-captioned action without prejudice, each party to bear its own costs.

The Parties agree and stipulate that, if Plaintiff reinitiates legal action in connection with or involving Zostavax, Plaintiff may refile that legal action, if any, only with the same causes of action and seeking the same relief, and only, in the Superior Court of New Jersey, Law Division, Middlesex County. Plaintiff waives any right he may have under N.C. Gen. Stat. Ann. 1A-1, Rule 41, to commence a new action within one year in North Carolina.

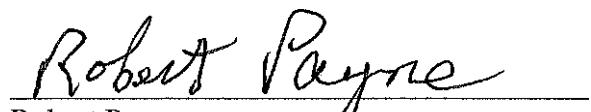
The Parties further agree and stipulate that, if Plaintiff reinitiates legal action in connection with or involving Zostavax, all statutes of limitations for the dismissed claims of Plaintiff and as alleged in this case are tolled from the date on which Plaintiff originally filed this case in the General Court of Justice, District Court Division, Iredell County, North Carolina (i.e., October 3, 2017) until the date that these claims are re-filed, but that the Parties’ tolling

agreement only applies if Plaintiff re-files his claims (1) within 30 days of the dismissal of his claims in this Court and (2) in the Superior Court of New Jersey, Law Division, Middlesex County.

The Parties further agree and stipulate that their tolling agreement is contingent on the accuracy of Plaintiff's allegation that, on or about June 28, 2016, he was first treated for any injury or condition that Plaintiff attributes to ZOSTAVAX—a representation on which Defendants are relying and that is material to their Stipulation.

The Parties further agree and stipulate that, except as expressly set forth above, this Stipulation and their tolling agreement are subject to, do not waive, and preserve all of Defendants' defenses in this legal action or in any reinitiated legal action, including, but not limited to, the right to challenge the jurisdiction of any Court, including the Superior Court of New Jersey, Law Division, Middlesex County, over any Defendant if Plaintiff reinitiates legal action in connection with or involving Zostavax.

Dated: January 24, 2018

  
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Robert Payne, pro se

*Plaintiff*

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**CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that on January 24, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will generate and send a Notice of Electronic Filing to counsel for Defendant McKesson Corp., and that a copy was served upon the following by first class U.S. Mail, in a postage prepaid envelope addressed as follows:

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*Pro Se Plaintiff*

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